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No. 424

FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1932

WALKER WOOD, Secretary of State, Et. Al,
Appellants,

VS.

STEWART C. BROOM, Appellee.

MOTION TO ADVANCE.

GREEK, L. RICE,
Attorney General of Mississippi
J. A. LAUDERDALE,
Assistant Attorney General
of Mississippi,
Attorneys for Appellants.

In The Supreme Court of The United States

WALKER WOOD, ET AL.....APPELLANTS

No..... VS.

S. C. BROOM .....APPELLEE

MOTION TO ADVANCE.

Now come the appellants, by their attorneys, and move the court to advance the above cause and set it for hearing at some early date so that same may be heard and determined prior to the general election for members of Congress to be held in the State of Mississippi on the 8th day of November, 1932.

The statement of the case, finding of facts and conclusion of law made by the courts below are hereto attached and made a part hereof.

For grounds of said motion, appellants assign the following:

FIRST: Appellants contend that Chapter 197 of the Laws of 1932 does not contravene any provision of the Constitution of the United States and that members of Congress from said state should be elected by districts; that the election of members of Congress from the state-at-large will be null and void; that unless the injunction granted by the court below is dissolved and members of

Congress elected from districts, it will be necessary to hold special elections in the State of Mississippi for the election of Congressmen; that said special election will cost the said state in excess of $50,000; that two primary elections may be held and that each of them will cost in excess of $50,000.

That inasmuch as it is necessary to hold a general election on November 8 for the purpose of electing Supreme Court Judges and Highway Commissioners and inasmuch as the candidates for Congress have already been nominated from districts, such candidates may be elected without any additional expense.

SECOND: If the election is held on November 8 from the state-at-large in order to determine who is and who is not entitled to seats in the national Congress, it will be necessary to carry on expensive litigation and/or contests in the House of Representatives, which will entail large unnecessary expense.

THIRD: On account of said illegal election from the state-at-large, the State of Mississippi, in all probability, will be deprived of representation in the House of Representatives until the courts have determined the constitutionality of said statutes or until the contests are determined by Congress, and thereafter until a special election will be called and held, all to the irreparable damage to the best interest of the state.

FOURTH: In the event this cause is advanced, heard and determined prior to the November election, then said

election for members of Congress may be had in said state either from the state-at-large or from districts in accordance with the decree of this court, in which event the state will not be deprived of its representation, it will not be put to the enormous expense of holding a special election, and expensive litigation and contests in Congress will be aovided.

In the event this court finds that said cause cannot be advanced on the docket, heard and determined prior to the November election, the appellants move the court to supersede the injunction granted by the court below until this cause can be heard on its merits by this court, and for grounds of said motion assign the same grounds as are herein assigned in the motion to advance.

Respectfully submitted,

GREEK L. RICE,
Attorney General

J. A. LAUDERDALE,
Assistant Attorney General
Attorneys for Appellants

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

STEWART C. BROOM,
Complainant,
VS. IN EQUITY
WALKER WOOD, SECRETARY OF STATE, ET AL, Defendants. NO. 407

Before FOSTER, Circuit Judge, and HOLMES and DAWKINS, District Judges.

FOSTER, Circuit Judge.

This is a bill brought by Stewart C. Broom, a citizen of the United States, domiciled in Mississippi, against various state officers, praying for interlocutory and final injunctions to prohibit them from acting under the provisions of House Bill No. 197 of the 1932 Acts of the Legislature of Mississippi, known as the Congressional Redistricting Act, on the ground that it violates the provisions of Art. 1, Sec. 4 of the Constitution of the United States and Sec. 3 of the Act of Congress of August 8, 1911, (Title 2 U. S. C. A. Sec. 3). The defendants, appearing through the Attorney General of Mississippi, admitted all the allegations of fact in the bill but objected to the jurisdiction of the court on the grounds that sufficient jurisdictional amount was not involved and that the cause was not cognizable in equity as no rights of property were invaded. The plea to the jurisdiction was overruled and an interlocutory injunction issued on bond. On final hearing the injunction was made permanent.

STATEMENT OF FACTS.

The undisputed material facts are these. Based on the census enumeration of 1910, Mississippi was allotted eight representatives in Congress. Under the provisions of Sec. 22, Act of June 18, 1929, 46 Stat. 26, the allotment was reduced to seven.

The act of the Mississippi Legislature complained of, House Bill No. 197, Regular Session 1932, divides the state of Mississippi into seven congressional districts. The number of inhabitants in each district is approximately as follows: The first district 241,000; second district, 219,000; third district, 420,000; fourth district, 184,000; fifth district, 244,000; sixth district, 284,000; seventh district, 414,000.

According to the 1930 census, Mississippi has 2,009,-821 inhabitants. It would be practicable to divide the state into seven districts having compact and contiguous territory with each district having approximately the same number of inhabitants.

CONCLUSIONS OF LAW.

The right to vote for a Representative in Congress is a right guaranteed by the Constitution of the United States. *U. S. vs Mosley*, 238 U. S. 383. Said right to vote implies the right to vote in a legal election. Sec. 3 of the Act of August 8, 1911, requires each state to be divided into the number of districts equal to the number of representatives to which the state may be entitled, said districts to be composed of contiguous and compact territory, and to have as

nearly as practicable the same number of inhabitants. The act is mandatory and must be followed by the states in fixing Congressional districts. The Mississippi act is clearly violative of the said act of Congress and illegal and void. Any election for representatives based upon the redistricting of the state under the provisions of said act will therefore be illegal and deprive the voters of the state of a right guaranteed by the Constitution. The plaintiff has no remedy at law at all. An injunction is the proper remedy in the premises.

Under the provisions of Sec. 24, Subdiv. 14, Judicial Code (28 U. S. C. A. 41) the District Court has jurisdiction in equity, regardless of the amount involved or the violation of any right of property, to prevent invasion of any right of a citizen guaranteed by the Constitution.